

LABOUR DEPARTMENT

The 11th February, 1986.

No. 9/9/86-6 Lab./681.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the Workman and the management of M/s. Kalkaji Engineering Co., Plot No. 248, Sector 24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 388/1982.

between

SHRI RAM NAGINA, WORKMAN AND THE MANAGEMENT OF M/S. KALKAJI ENGINEERING CO., PLOT NO. 248, SECTOR 24, FARIDABAD.

Present:—

Shri Manohar Lal, for the workman.

Shri R. Gogna, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between Shri Ram Nagina, workman and the Management of M/s. Kalkaji Engineering Co., Plot No. 248, Sector 24, Faridabad to this Tribunal for adjudication:—

Whether the termination of services of Shri Ram Nagina was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 22nd November, 1982, alleged that he had been working as Moulding Operator for the last five years in the respondent-factory at Rs. 385/- per month. It was further alleged that the claimant left for his village from 5th May, 1982 to 18th May, 1982 on sanctioned leave, but he fell ill and sent an application for extension of leave by post card. It was further alleged that on 6th June, 1982, the claimant reported for duty but the Management refused to allow him duty and thus terminated

his services with effect from that date. It was alleged that the termination of his service was illegal and as such, he was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 16th December, 1982, pleaded *inter alia* that the claimant was working as Hand Moulder on clay and wooden moulding boxes without any act of operation or without any use of power. It was denied that the claimant got his leave sanctioned but, on the other hand, he absented himself from duty with effect from 5th May, 1982 on unauthorised leave and never cared to report for work. It was further denied that the claimant fell ill or that he sent any post card. It was also denied that the Management ever refused to allow him to join duty, but the medical certificate seemed to be a forged one, due to which he was asked to give fitness certificate. It was further alleged that the work of the claimant was fairly good, but his unauthorised absence could not be justified. It was also pleaded that the Management offered him to join duty, which offer was repeated in the written comments as well as oral statement before the Conciliation Officer. It was further pleaded that the Management never terminated the services of the claimant, but the claimant abandoned his service and that due to his good work, the Management was ready to accommodate him even on higher wages.

4. The claimant in his rejoinder dated 12th January, 1983, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 12th January 1983:—

(1) Whether the workman abandoned his job of his own accord? OPM.

(2) Whether the termination of service of Shri Ram Nagina was justified and in order? If not to what relief is he entitled? OPM.

6. It may be mentioned that the Management has examined one witness and documents Exhibit M-1 to M-8 have been tendered into evidence. The claimant has appeared in the witness box and documents Exhibit W-1 to W-3 have been tendered into evidence. After going

through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

ISSUE NO. 1:

7. The Management has examined MW-1 Shri Sunder Dass, Partner of the respondent management, who stated that the claimant was a Hand Moulder in their factory, but he was absenting himself since 5th May, 1982. He further stated that they never refused to take the petitioner on duty. He further stated that when the claimant came back, he had brought medical certificate when he was asked by the Management to bring the fitness certificate. He also stated that the claimant did not bring fitness certificate and did not join duty, which showed that the claimant had got some other job. He further stated that Exhibit M1 was the copy of the comments given in conciliation proceedings while Exhibit M-2 was the copy of the conciliation report. He also stated that the name of the claimant was ultimately struck off from the muster rolls on 31st August, 1982 and that Exhibit M-3 to M-5 were the copies of extracts from the attendance register. He further stated that the claimant was asked to join duty after getting increased salary by Rs. 50, but the claimant did not join duty.

8. WW-1 Shri Ram Nagina stated that he worked in the respondent factory for about 4 years, when he proceeded on 15 days' leave on 5th May, 1982 and went to his home where he became ill and sent a medical certificate. He further stated that he was not allowed to join duty, but the letter Exhibit W-1 was delivered to him by the Management. He further stated that he had brought his fitness certificate and had handed over the same to the Management, but he was not allowed to join duty. He also stated that Ex. W-2 was the duplicate copy of the fitness certificate and that reply to the letter Ex. W-1 was sent by registered post,—vide postal receipt Ex. W-3. He stated that no letter was received by him from the Management asking him to join duty during the conciliation proceedings and that no offer was made to him during those proceedings.

The above testimony of MW-1 Shri Sunder Dass shows that the claimant absented himself from duty with effect from 5th May, 1982 without getting his leave sanctioned and that the claimant had sent a medical certificate, but he did not produce any fitness certificate, due to which his name ultimately struck off from the muster

rolls on 31st August, 1982. His evidence also shows that in conciliation proceedings the offer was made to the claimant to join duty on producing fitness certificate, but he failed to do so,—vide copy of the written comments filed in conciliation proceedings Exhibit M-1. In the letter pad W1 dated 6th June, 1982, the claimant was asked to explain as to why he proceeded on leave without sanctioned leave. In the written statement dated 16th December 1982, the Management took the plea that they were ready to accommodate the claimant as he was an experienced old hand. The testimony of the claimant as WW-1 that he was not allowed to join duty even though he had brought fitness certificate, Exhibit W-2, cannot be accepted because if he had handed over this certificate dated 4th June, 1982 to the Management, they would not have written the letter dated 6th June, 1982/Ex. W-1. The Management asked the claimant to bring fitness certificate on 20th July, 1982, as well,—vide document Ex. M-1. It is thus apparent that the medical certificate was not being submitted by the claimant because otherwise he would have taken the plea in the conciliation proceedings that the Management had refused to receive the fitness certificate. It is thus apparent that the claimant did not join duty even though the offer was made to him, in the conciliation proceedings due to which his name was struck off on 31st August, 1982, from the muster-rolls due to his continued absence from duty and as such the claimant abandoned the job. The issue is decided accordingly in favour of the Management.

ISSUE No. 2:

10. MW-1 Shri Sunder Dass stated that the foundry had been closed with effect from 4th May, 1984,—vide documents Exhibit M-6 to M-8. Shri Ram Nagina claimant WW-1 stated in cross examination that he did not know if the foundry had been closed because he did not go there after the termination of service. The testimony of MW-1 Shri Sunder Dass, which is corroborated by the documentary evidence Exhibit M-6 to M-8, therefore, goes to show that the foundry was closed on 4th May, 1984 especially when there is no cogent evidence in rebuttal.

11. It was argued by the representative of the claimant that the Management did not comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947, while terminating the services of the claimant inasmuch as no notice pay or compensation was paid to him. The representative of the Management, on the

other hand, argued that it was a case of abandonment of service and not termination of service and as such the provisions of Section 25-F of the Industrial Disputes Act, 1947, did not apply and reliance was placed on the ruling reported as *Oriental Textile Finishing Mills, Amritsar and Labour Court, Jullundur and others* 1971-II-LLJ-page 505. This ruling is distinguishable on facts because in that case, the services of 30 workmen were terminated, who were on illegal strike. In the present case, the Management terminated the services of the claimant due to his continued absence from the duty without getting leave sanctioned. In the ruling reported as *Desh Raj Sood and another v. Presiding Officer, Industrial Tribunal and another*, 1984-Lab. I.C. 1651, it is laid down that where the services of the employee were terminated under the standing order consequent to the loss of lien by the workman on consecutive absence, it amounted to termination of service within the meaning of Section 2(00) of the Industrial Disputes Act, 1947, and that the provisions of Section 25-F of the said Act were attracted. Following this ruling, it is held that the termination of service of the claimant was illegal because the provisions of Section 25-F of the Industrial Disputes Act, 1947, were not complied with inasmuch as no notice pay or compensation was paid to him. Since the foundry had been closed with effect from 4th May, 1984, therefore, the claimant is not entitled to reinstatement, but he is entitled to notice pay and compensation etc. under the provisions of Section 25-F read with Section 25-FFF of the Industrial Disputes Act, 1947 and full back wages from 5th May, 1982 to 4th May, 1984. The award is passed accordingly.

Dated : 13th January, 1986.

R. N. BATRA
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 37, dated the 13th January, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under Section 95 of the Industrial Disputes Act, 1947.

R. N. BATRA

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No^o 9/9/86-6Lab./683.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is placed to publish the following award of Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the workman and the management of M/s. Bhagwan Dass Ghai and Sons Re-Rollers (P) Ltd. plot No. 25, Sector 6 Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD
References Nos. 4/1982 and 10/1982

between

SHRI RAJ KUMAR AND SHRI SHAM LAL WORKMEN AND THE MANAGEMENT OF M/S BHAGWAN DASS GHAI AND SONS, RE-ROLLERS (P) LTD., PLOT NO. 25, SECTOR-6, FARIDABAD.

Present:—

Shri M. K. Bhandari for the workman.
Shri H. R. Dua for the Management.

AWARD

This award would dispose of two consolidated references bearing No. 4/1982 (Shri Raj Kumar v/s Management of M/s Bhagwan Dass Ghai and Sons, Re-Rollers (P), Ltd., and No. 10/1982 (Shri Sham Lal v/s Management of M/s Bhagwan Dass Ghai and Sons, Re-Rollers (P) Ltd. and the main proceedings have been held in reference No. 4/1982.

2. In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Raj Kumar and Shri Sham Lal, workmen and the Management of M/s Bhagwan Dass Ghai and Sons, Re-Rollers (P) Ltd., Plot No. 25, Sector-6, Faridabad to this Tribunal for adjudication:—

Whether the termination of service of Shri Raj Kumar and Shri Sham Lal was justified and in order? If not to what relief they are entitled?

3. The allegations made in the demand notice, dated 3rd September, 1981, are that Shri Raj Kumar claimant was employed as Tongsman on 20th March, 1976, while Shri Sham Lal

on 1st August, 1976. It was further alleged that on 28th April, 1981 when the claimants came for duty, they were suspended and that charge-sheet, dated 24th April, 1981 was received by them on 27th April, 1981, in English language when the claimants prayed that the Hindi version of the charge-sheet be given to them. It was further alleged that the Hindi version was supplied to them on 13th July, 1981. It was further alleged that the enquiry was held against the claimants without complying with the principles of natural justice and that no facilities were granted to them. It was also alleged that the claimants were informed regarding the second charge-sheet on 18th June, 1981 and that the Enquiry Officer started proceedings on 28th June, 1981, but the copy of the charge-sheet was not given to the claimants, which was later on supplied to them on 12th July, 1981. It was alleged that second enquiry was also not held in accordance with the principles of natural justice. It was further alleged that the claimants were dismissed,—vide order dated 14th August, 1981, because they were members of the Union. It was, therefore, proved that the claimants be reinstated with full back wages.

4. The Management in its written statement dated 2nd April, 1982, pleaded that the claimants were served with a charge-sheet dated 24th April, 1981, and were asked to submit their explanation. It was further pleaded that on receipt of explanation, the domestic enquiry was ordered and Mrs. Ranjana Sharma, Advocate was appointed as Enquiry Officer. It was further pleaded that the Enquiry Officer granted several amenities, to the claimants and gave full and fair opportunity to them to produce their defence evidence and thereafter submitted her report dated 20th July, 1981. It was further pleaded that the claimants committed another misconduct, due to which they were charge-sheeted on 30th May, 1981 and that Mr. Satish Kumar Ahuja was appointed as Enquiry Officer who held the enquiry in accordance with the principles of natural justice. It was also pleaded that the Management considered the charges explanation and proceedings and concurred with the findings of the Enquiry Officer and terminated the services of the claimants,—vide order dated 14th August, 1981. It was further pleaded that thereafter the claimants approached the management on 19th September, 1981 to settle their accounts, when Rs. 2,430.50 were paid to Shri Raj Kumar and Rs. 3,377.40 paise to Shri Sham Lal in full and final settlement of their accounts as such references became infurcuous.

5. The claimants in their rejoinder filed on 6th May, 1982, reiterated the pleas taken in the demand notice.

6. On the pleadings of the parties, the following issues were framed on 6th May, 1982:—

(1) Whether the domestic enquiry is fair and proper? OPM..

(2-A) Whether the claimants had received the amount in full and final settlement of their claim as pleaded? OPM.

(2) Whether the termination of service of the claimants was justified and in order? If not, to what relief are they entitled to? OPM.

7. It may be mentioned that the Management has examined three witnesses and documents Ex. M-1 to M-22 have been tendered into evidence. The claimants have examined four witnesses and documents Ex. W-1 to W-20 have been tendered into evidence. After going through the entire evidence and hearing the representatives of the parties, my findings on the above issues are as under:—

ISSUE No. 1:

8. As regards the first enquiry, Ex. M-2 is the charge-sheet dated 24th April, 1981, in which it was alleged that on 17th April, 1981, the claimants did not attend their work properly and were wilfully negligent and careless in the performance of their normal duty to damage the interest of the factory. It was alleged that at 11.00, the claimants wilfully fed a stainless steel Ingots, after allowing it to cool down considerably into rolling mill, which resulted in boring of one coupling, due to which they were warned by the Supervisory Staff, but the claimants took the matter very lightly. It was further alleged that the claimants repeated the same acts at 12.40 P.M., which again resulted in boring of another coupling, due to which they were warned by the Supervisor. It was alleged that between 4.30 P.M., to 5.00 P.M., the claimants in conspiracy with each other did not feed 4 numbers of stainless steel Ingots into the rolling mill and allowed to cool down, due to which they were called upon by the Supervisor to give explanation, but the claimants started abusing the supervisor and took pairs of tongs to hit the supervisor, due to which the supervisor became frightened and rushed to the office. It was alleged that the claimants had thus caused the damage amounting to Rs. 6,450, the details of which have been

given in the charge-sheet. The enquiry proceedings Ex. M-3 showed that the claimants were represented by Shri Satrughan Dwivedi in the enquiry, when the Management examined Shri Hori Lal, Supervisor and Shri Rajinder Mehta, Manager of the Company. Shri Raj Kumar, claimant appeared in the witness box and thereafter the claimants started making a noise and refused to participate in the enquiry proceedings and did not file their objections in writing as mentioned in the enquiry report Ex. M-4 and Enquiry proceedings Ex. M-3. The Enquiry Officer concluded the enquiry proceedings and submitted her report dated 29th July, 1981, holding the claimants guilty of the charges mentioned in the charge-sheet.

9. It was argued by the representative of the claimant, that the claimants had made a prayer that they should be represented through Shri Chhottu Ram, but their request was not acceded to. The representative of the Management argued that Shri Chhottu Ram was an accused in the criminal proceedings and as such he could not be allowed to represent the claimants in the enquiry. In the present case, the claimants were represented by Shri Shatrujan Dwivedi on their own request, who was an outsider as mentioned in the enquiry report Ex. M-4. The argument has thus no force because the claimants were represented by Shri Shatrujan Dwivedi according to their wishes and that Shri Chhottu Ram could not be represented being a co-accused in the criminal proceedings.

10. It was then argued that Shri Raj Kumar, claimant was examined by the enquiry officer while the claimants were not allowed to produce Shri Sham Lal and other witnesses in defence. The argument does not carry any weight because in the enquiry report Ex. M-5, it is clearly mentioned that after examination of Shri Raj Kumar claimant, the claimants became uncooperative and started making noise and refused to participate in the enquiry proceedings and did not file their objections in writing. Under these circumstances, the Enquiry Officer was constrained to close the enquiry.

11. It was then alleged that witnesses of the Management were not allowed to be cross-examined properly. The argument has no force because the witnesses produced by the Management, namely Shri Hori Lal, Supervisor and Shri Rajinder Mehta, Manager were cross-examined at a great length by the claimants.

12. It was also argued that the claimants were not allowed to produce Shri Harnek Singh

as defence witness in the enquiry report Ex. M-4, it is clearly mentioned that even though the name of Shri Harnek Singh was not mentioned in the list of witnesses furnished by the claimants, the Enquiry Officer allowed them to produce Shri Harnek Singh. Since the claimants later on refused to participate in the enquiry, therefore, their defence was closed as mentioned above. As such the claimants did not produce Shri Harnek Singh, even though they were permitted by the Enquiry Officer to produce this witness.

13. The representative of the claimants placed reliance on the ruling reported as *State of Uttar Pradesh and Mohd. Sharif (dead) through L.Rs. 1982-II-LLJ*, page 180, in which it is laid down that failure to mention particulars regarding date and time of alleged misconduct and certain other particulars in the charge-sheet amounted to denial of reasonable opportunity to defend enquiry. This ruling is distinguishable on facts because in the present case the particulars have been given in the charge-sheet. The second ruling is *The Board of Trustees of the Port of Bombay and Dilipkumar Raghavendranath Nadkarni and others*, 1983-I-LLJ, page 1, in which it is laid down that the rules do not inhibit in the employee to be defended by a legal practitioner. This ruling is distinguishable on facts because the same was given in a case, relating to Rule 12(8) of Bombay Port Trust Employee Regulations, 1976, which does not apply to the present case. The third ruling in *Bhagat Ram and State of Himachal Pradesh and others*, 1983-I-LLJ, page 1, in which it was laid down that the department must enquire from the delinquent servant whether he would like to engage some one to defend him. This ruling is distinguishable on facts because in the present case, the claimants were represented by Shri Shatrujan Dwivedi, as mentioned above. The fourth ruling is *Divisional Manager, Life Insurance Corporation of India Madurai and R. Sivsathymuthy*, 1988/LLJ, page 118, in which it is laid down that suspicion cannot be allowed to take the place of proof. This ruling does not help the claimants because in the present case, the enquiry Officer has based the finding on the evidence produced before her. The fifth ruling is *Rajinder Kumar Kandira and Delhi Administration through Secretary (Labour) and others*, 1984-II-LLJ, page 517, in which it is laid down that where the findings of arbitrator were based on no evidence, there was scope of interference. The ruling does not help the claimants because the Enquiry Officer has given the findings after considering the evidence led before her. Consequently, it is held that enquiry based on the charge-sheet Ex. M-2 was fair and proper.

14. As regards the second enquiry, Ex. M-10 is the charge-sheet dated 30th May, 1981, in which it is alleged that on 6th May, 1981, the claimant, gathered illegally on the factory gate, with the strikers and other outsiders with lathis, knives and chhuris and threatened the Director of the Company Shri B. R. Ghai and attacked him and caused him injury and insulted and threatened him to kill, the report regarding which was lodged to the Police. Ex. M-11 contains the enquiry proceedings, while Ex. M-14 is the report submitted by the Enquiry Officer. WW-2 Shri Raj Kumar stated that they were acquitted in criminal proceedings. Ex. M-13 is the copy of the first information report, which was lodged with the police. The copy of the judgement dated 13th November, 1984 has been filed, which shows that learned Judicial Magistrate, 1st Class, Faridabad, acquitted all the accused, namely, Shri Chhatu Ram, Shri Ram Sanyan, Shri Raj Kumar and Shri Ram Lal. It is thus apparent that Shri Shyam Lal, claimant was not even a co-accused in criminal proceedings regarding this very incident. F.I.R. was lodged on the same grounds on which the claimants have been chargesheeted in the domestic enquiry. When the F.I.R. was lodged with the police on 6th May, 1981, there was hardly any necessity to charge-sheet the claimants by the Management on 30th May, 1981. When the charges in the criminal case, and domestic enquiry were identical, the Management should have waited the result of the criminal proceedings launched by them. Under all these circumstances, the holding of the enquiry against the claimants was neither fair nor proper because Shri Sham Lal was not an accused in the criminal proceedings and the charges framed by the management were of identical nature.

15. In view of the above discussion, it is held that the enquiry relating to the charge-sheet dated 24th April, 1981, Ex. M-2 only was fair and proper. The issue is decided accordingly in favour of the Management.

ISSUE No. 2-A:

16. The Management has examined MW-3 Shri Balwant Rai, Director of the Company, who stated that the Managing Director of the Company had passed order for payment of dues to Shri Raj. Kumar and Shri Sham Lal, claimants and that he had seen the vouchers Ex. M-18 and M-19 which were signed by the claimants and were attested by him. He further stated that the sum of Rs. 2,430.50 paise was paid to Shri Raj Kumar, while Rs. 3,377.40 paise were paid to Shri Sham

Lal in his presence in full and final settlement of their claim. Both these vouchers do not bear the signatures of the Accountant and the Cashier, even though the column has been prescribed for the same. MW-3 Shri Balwant Rai stated that the entries in these vouchers were made by the Accountant, but he could not tell his name because a number of persons were employed as Accountant from time to time. Consequently, the name of person who made the entries in these vouchers is not known to the Management. Further, vouchers were allegedly prepared on 19th November, 1981, when the demand notice dated 3rd September, 1981, had already been given. If any settlement had taken place in conciliation proceedings the signature of the concerned official in Conciliation Office would have been obtained on these vouchers, but these vouchers do not bear the signatures of any official of the Conciliation Office. Further, WW-1 Shri Sham Lal and WW-2 Shri Raj Kumar have denied their signatures on these vouchers and stated that they never took the amount in question from the Management, as a result of any settlement. WW-3 Shri Ram Pat who appeared on 10th September, 1985, stated that the accounts of other persons were settled about five months ago in his presence. WW-4 Shri Prem Chand who appeared on 24th September, 1985, also made a similar statement and deposed that the accounts of 9 other workers were settled on the same date which his accounts were also settled on that date. The evidence led by the claimant in re-buffal thus goes to show that the amount mentioned in the vouchers Ex. M-18 and M-19 was not received by them on 19th November, 1981, because they have led cogent evidence in rebuttal in this respect and the infirmities in the evidence led by the Management have been pointed out above. Consequently, it is held that the Management has failed to prove that the claimants had received the amount in full and final settlement of their claims—vide vouchers Ex. M-18 and M-19. The issue is decided accordingly against the Management.

ISSUE No. 2:

17. As already mentioned above, the accounts of 9 others workers have been settled by the Management which obviously means that they have been paid some compensation, besides others dues. It is thus clear that the Management took a lenient view in 9 cases by giving them some compensation, etc. The claimants cannot be discriminated and as such the punishment of dismissal which is hereby set aside is being

not proportionate to the misconduct attributed to the claimants. Consequently, the ends of justice would be met if in lieu of reinstatement, Shri Raj Kumar is awarded lump sum compensation amounting to Rs. 2,430.40 paise while Shri Sham Lal Rs. 3,377.40 paise. The award is passed accordingly.

Dated the 13th January, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 39, dated the 13th January, 1986

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA.

Presiding Officer.
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-Lab./739.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal Faridabad in respect of the dispute between the workman and the management of M/s Rattan Chand Hariash Rai (Moulding) Pvt. Ltd., 19/6, Mathura Road, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 491/1983.

Between

SHRI PREM SINGH, WORKMAN AND THE MANAGEMENT OF M/s RATTAN CHAND HARJASH RAI (MOULDING) PVT LTD., 19/6 MATHURA ROAD, FARIDABAD.

Present:

Shri Amar Singh Sharma, for the workman.

Shri M. P. Gupta, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Prem Singh workman and the Management of M/s Rattan Chand Hariash Rai (Moulding) Pvt. Ltd., 19/6, Mathura Road, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Prem Singh was justified and in

order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement dated 2nd July, 1984, it was alleged that the claimant was employed by the respondent on 16th March, 1981 as permanent Fitter and was getting Rs. 700 per month. It was further alleged that the services of the claimant were terminated illegally with effect from 2nd December, 1982 in a revengeful spirit because he became the member of the union and as such he was taken off duty after recovery from his illness, even though the claimant submitted the fitness certificate. It was alleged that the claimant fell ill on 19th November, 1982 and he sent medical certificate alongwith an application, which was received by the Management and that on 2nd December, 1982 he was not allowed to resume duty. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in its written statement dated 21st August, 1984 pleaded that the reference was premature and the dispute did not lie within the purview of Section 2-A of the Industrial Disputes Act, 1947. It was further pleaded that the claimant was employed in M/s Synthetic Resins on 16th March, 1982 as Fitter at Rs. 700 per month where he took his full and final account on 31st March 1982. It was further pleaded that the claimant took temporary employment in M/s Chemico Plastic Corporation on 1st July, 1982 and worked up till 25th August, 1982 when his services were dispensed with and he took his full and final account on 2nd September, 1982. It was also pleaded that the claimant joined services of M/s Rattan Chand Hariash Rai (Mouldings) Pvt. Ltd. on temporary basis for 3 months from 20th September, 1982 to 19th December, 1982 as Fitter, but he absented himself from 17th November, 1982 to 19th November, 1982 without any lawful permission and as such his services automatically came to an end on expiry of the contracted period. It was pleaded that the plea regarding sickness was wrong and that the claimant did not give any intimation in that respect.

4. The claimant in his rejoinder dated 15th October, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the reference is premature?

OPM

- (2) Whether the dispute is not covered by section 2-A of the Industrial Disputes Act, 1947? OPM
- (3) Whether the claimant was employed on temporary basis for 3 months and he absented himself? OPM
- (4) Whether the termination of services of Shri Prem Singh was justified and in order? If not, to what relief is he entitled? OPM.

6. It may be mentioned that the Management has examined four witnesses and documents Exhibits M-1 to M-8 have been tendered into evidence. The claimant has appeared in the witness box and documents Exhibit W1 to W12 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE No. 1:

7. The demand notice was given by the claimant on 8th December, 1982. The case of the claimant is that he was not allowed to join duty with effect from 19th November, 1982 and that his services were terminated illegally. The plea of the Management also shows that the claimant absented himself from duty with effect from 17th November, 1982 to 19th November, 1982. Consequently, on 8th December, 1982 when the demand notice was given, he was not being treated on duty with effect from 19th November, 1982. As such the reference is not premature. The issue is decided accordingly against the Management.

ISSUE No. 2:

8. The present dispute is an individual one and the claim statement/demand notice were signed by the claimant. The present dispute is thus covered by the provisions of section 2-A of the Industrial Disputes Act, 1947. The issue is decided accordingly against the Management.

ISSUE No. 3:

9. The Management has examined MW-1 Shri Kanihya Khan, Office Superintendent who stated that the claimant worked in M/s. Synthetic Resin and Polymer Co., Faridabad from 16th March, 1982 to 31st March, 1982 and took his full and final account,—vide document Ex. M-1. MW-2 Shri Suresh Jain, Works Manager, stated that the claimant remained in service of M/s. Chemico Plastic Corporation, which was a partnership concern, from 1st May, 1982 to October,

1982 and that the appointment letter Ex. M-2 was signed by the witness as Works Manager of M/s Chemico Plastic Corporation. He further stated that the claimant was employed for a fixed period of two months and that Exhibits M-3 and M-4 were the copies of the vouchers by which the claimant received the payment. MW-3 Shri Mahesh Kumar Jain stated that he passed the order on the application Exhibit M-5 which was signed by the claimant, and that appointment letter Exhibit M-6 was issued by him when the claimant was employed in M/s. Rattan Chand Harjas Rai. He further stated that the claimant was appointed for three months on temporary basis.

10. WW-1 Shri Prem Singh stated that he was employed by M/s. Rattan Chand, Harjas Rai respondent company on 16th March, 1981 as Maintenance Fitter and was drawing Rs. 700 per month when he was turned out on 2nd December, 1982 without any complaint. He further stated that he fell ill on 19th November, 1982 and sent the medical certificate on 20th November, 1982, which was duly received by the Management and that the fitness certificate was produced by him on 2nd December, 1982, but he was not allowed to join duty. He further stated that they had formed a Union and he was elected President of that Union which demanded certain facilities, but the Management did not provide the same. He further stated that the Management nursed a grudge against him due to his trade union activities and turned him out. He further stated that he did not work in M/s. Synthetics Resin and M/s Chemico Plastic Corporation and that documents Exhibit M-1 to M-4 did not bear his signatures. He also stated that MW-2, Shri Suresh Jain was the Works Manager in M/s Rattan Chand Harjas Rai since, 1972 and that Exhibit W-4 was the certified copy of his statement. He also stated that Exhibit W-6 to W-11 were the gate passes issued by the respondent to the claimant. The Gate Passes Exhibit W-1 to W-3 and letter Exhibit W-5 have also been proved by this witness.

11. A perusal of the above evidence would show that the Management has examined MW-1 Shri Kanihya Khan, who deposed that the claimant worked in M/s. Synthetic Resin and Polymer Co. from 16th March, 1982 to 31st March, 1982 and settled his full and final account,—vide document Exhibit M-1. Shri Suresh Jain MW-2 has been produced to depose that the claimant worked in M/s Chemico Plastic Corporation from 1st July, 1982 to 25th

August, 1982,—vide letter Exhibit M-2 and settled his account—vide documents Exhibit M-3 and M-4. MW-3 Shri Mahesh Kumar Jain has been produced to show that the claimant remained in service of M/s Rattan Chand Harjas Rai from 20th September, 1982 to 19th November, 1982 and that he was appointed for a period of three months,—vide application Exhibit M-5 and letter Exhibit M-6. The case of the claimant, on the other hand, is that he did not work in M/s Synthetics Resin and Polymer Co. and M/s Chemico Plastic Corporation, but on the other hand, he was in regular employment of M/s Rattan Chand Harjas Rai from 16th March, 1981 to 18th November, 1982, when he became ill on 19th November, 1982 and he reported for duty on 2nd December, 1982 along with fitness certificate but he was not allowed to join duty, even though the medical certificate was sent by him on 19th November, 1982. He denied his signatures on the documents Exhibit M-1 to M-4. The point for determination is that as to whether the version given by the Management or the case set up by the claimant is correct. Firstly MW-1 Shri Kanihya Khan stated that he did know regarding M/s Rattan Chand Harjas Rai. He further stated that he did not know Shri Mahesh Kumar Jain or Shri Suresh Jain. On the other hand, MW-2 Shri Suresh Jain admitted in cross-examination that all the above three concerns were situated in one compound, but the gates for entry of the workmen were different for each concern, but the main gate was common. Consequently the testimony of Shri Kanihya Khan cannot be accepted because all the three concerns were situated in the same compound and his replies in cross-examination go to show that he did not tell the truth and he thus does not appear to be an independent witness. MW-2 Shri Suresh Jain stated that he was Works Manager of Chemico Plastics Corporation and he remained in its service from 1st May, 1982 upto October, 1982. In cross-examination, he stated that he joined M/s. Rattan Chand Harjas Rai in 1983. The claimant has produced the copy of the statement by Shri Suresh Chand Jain (Exhibit W-4) made in another case on 13th March, 1985 in which he stated that he was working in M/s. Rattan Chand Harjas Rai factory as Works Manager since 1972. Consequently, he was not in service of M/s Chemico Plastic Corporation in 1982, but, on the other hand, he was in service of M/s Rattan Chand Hirjas Rai since 1972. In the statement Exhibit M-4 he also stated that he was the only Works Manager in M/s Rattan Chand Harjas Rai and

that workers were appointed by him. Consequently the appointment order Exhibit M-5 and appointment letter Exhibit M-6 could be issued by Shri Suresh Jain MW-2 only in 1982. The order Exhibit M-5 has been signed by Shri Mahesh Kumar Jain MW-3 as Works Manager. Consequently, documents Exhibit M-5 and M-6 do not help the respondent because the same could be issued by MW-2 Shri Suresh Jain. Likewise the document Exhibit M-2 regarding Chemico Plastic Corporation could not be issued by Mr. Suresh Jain because he was not in service of that factory in 1982. Secondly, the claimant has produced a number of gate passes issued in his favour. The details of some of those gate passes are as under:—

Serail No.	Gate Pass	Date
1.	Ex. W-1	6-3-1982
2.	Ex. W-2	7-9-1982
3.	Ex. W-3	14-5-1982
4.	Ex. W-6	14-5-1982
4.	Ex. W-7	9-1-1982
6.	Ex. W-9	4-9-1982
7.	Ex. W-11	9-9-1982

These gate passes go to show that the claimant was on duty on 6th March, 1982 7th September 1982, 14th May, 1982, 9th January, 1982, 4th September, 1982, and 9th September, 1982. According to the Management, the claimant was not on duty on these dates because the Management has mentioned his dates of employment as 16th March, 1982 to 31st March 1982, 1st July, 1982 to 25th August, 1982 and 20th September, 1982 to 19th November, 1982. The above gate passes thus demolish the case set up by the Management regarding the period of employment during which the claimant remained employed. Further, all these gate passes have been issued by M/s Rattan Chand Harjas Rai. This circumstance shows that the claimant remained on duty continuously in M/s Rattan Chand Harjas Rai only and not M/s Synthetics Resin and Polymer Co. and M/s Chemico Plastic Corporation. It may be mentioned that the Management examined MW-4 Shri Chan Singh who stated that Shri Gopal Sharan was in service of M/s Rattan Chand Harjas Rai, but he was on leave from 6th January, 1982 to 17th March, 1982. The entries from the attendance register for March 1982, Exhibit M-8, have been produced to show that Shri Gopal Sharan was on sick leave from 1st March, 1982 to

15th March, 1982. The submission was that the gate pass Exhibit W-1, dated 6th March, 1982, could not be signed by Shri Gopal Sharan. MW-3 Shri Mahesh Kumar Jain stated that Shri Gopal was not employed in their factory, but in the certificate Exhibit W-12 it is recited that Shri Gopal was in service as Supervisor on 23rd June, 1979 to 4th March, 1983. MW-4 Shri Chan Singh also admitted that Shri Gopal Sharan was in service of M/s Rattan Chand Harjas Rai. Out of the gate passes Exhibit W-1 to W-3 and Exhibit W-6 to W-11, some have been issued by Shri M. K. Jain while the remaining by Shri Gopal Supervisor. The gate pass Exhibit W-1 bears serial No. 126 and this gate pass was issued by the Management. MW-2 Shri Suresh Jain stated in cross-examination that the gate passes Ex. W-1 to W-3 were issued by M/s. Rattan Chand Harjas Rai. Even if the gate pass Ex. W-1 is not taken into consideration, the remaining gate passes clearly go to show that the claimant was under the employment of M/s Rattan Chand Harjas Rai only and not under M/s Synthetics Resin and Polymer or M/s. Chemico Plastic Corporation. The claimant has denied the documents produced by these two factories and stated that he never worked in these two factories. The circumstances of this case, therefore go to show that the claimant was in regular service of M/s. Rattan Chand Harjas Rai for the last more than one year continuously and had also completed the period of 240 days in a year and that he was not the employee of M/s Synthetic Resin and Polymer and M/s. Chemico Plastic Corporation. The issue is decided accordingly against the Management.

Issue No. 4.

12. In view of the discussion on issue No. 3 above, the provisions of section 25-F of the Industrial Disputes Act, 1947, are attracted to the facts of the present case because the claimant had rendered more than 240 days service in a year under M/s. Rattan Chand Harjas Rai respondent factory and since no notice pay or compensation was given to the claimant, therefore, the termination of his services was illegal. Consequently, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated: 21st January, 1986

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endostment No. 54 Dated 22nd January, 1986

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-Lab./740.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the workman and the management of M/s. Perfect Pac Limited, Packing Division, Plot No. 134, Sector 24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD.

Reference No. 454/1983

between

SHRI AMAR SINGH WORKMAN AND THE MANAGEMENT OF M/S PERFECT PAC LIMITED PACKING DIVISION, PLOT NO. 134, SECTOR-24, FARIDABAD.

Present:—

Shri S. S. Gupta, for the workman.

Shri R. C. Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 19 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Amar Singh workman and the Management of M/s Perfect Pac Limited (Packing Division) Plot No. 134, Sector-24, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Amar Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement dated 1st July, 1984, it was alleged that the claimant was working with the respondent as helper for the last two years and was getting Rs. 180 per month. It was further alleged that no enquiry was held regarding the charges levelled against the claimant and that dismissal of the claimant,—vide order dated 2nd February, 1983 was illegal because the enquiry held against the claimant was neither fair nor proper and that the Management as well as the Enquiry Officer did not provide the facilities to the claimant. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in its written statement dated 24th August, 1984 pleaded that the claimant intentionally refused to work inspite of many orders having been passed in writing. It was further pleaded that the claimant was charge-sheeted and Shri Devinder Singh Advocate was appointed as Enquiry Officer. It was pleaded that the claimant attended the enquiry, but refused to sign the enquiry proceedings, though the enquiry was held in his presence. It was denied that the dismissal of the claimant was illegal or in violation of the principles of natural justice.

4. The claimant in his rejoinder dated 19th September, 1984 reiterated the pleas taken in the claim statement.

5. On the pleading of the parties, the following issues were framed on 20th September, 1984:—

- (1) Whether the enquiry is fair and proper? OPM.
- (2) Whether the termination of service of Shri Amar Singh was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the Management has examined three witnesses and documents Exhibit M-1 to M-3 have been tendered into evidence. The claimant has examined one witness and document W-1 has been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1

7. The Management has examined MW-1 Shri Jagishwar Parshad Assistant in the Labour

Commissioner, Haryana, Chandigarh, who stated that he had brought the summoned file. He proved the documents Exhibit M-1 to M-4 and also enquiry proceedings Exhibit M-5, and enquiry report Exhibit M-6 from his record. MW-2 Shri Ranjit Singh, Time Officer Clerk, stated that he took over the charge from Mr. Om Parkash and that he received documents Exhibit M-5 to M-6 only from him while the other record was not available and that the record was destroyed by his predecessor. MW-3 Shri Devinder Singh Advocate stated that he was appointed as Enquiry Officer in this case,—vide letter Exhibit M-7 to enquire into charges mentioned in Exhibit M-1. He further stated that the claimant participated in the enquiry and that the proceedings were held in his presence, but he refused to sign the day to day proceedings. He also stated that Mr. Om Parkash used to represent the Management, who had signed these proceedings. He also stated that since the claimant refused to sign the proceedings Exhibit M-5, therefore, he joined Mr. Prabhu Watchman to observe the enquiry proceedings and obtained his signatures, whenever the claimant refused to sign these proceedings and that a note to that effect was given by him. He further stated that he gave opportunities to the claimant to produce his defence, but he refused to do so and that a note to that effect was given in the enquiry proceedings. He also stated that the documents were produced in the enquiry proceedings which had been mentioned in the statement of Shri Om Parkash. He further stated that Exhibit M-6 contained the findings in the enquiry.

8. Shri Amar Singh claimant stated that he was employed on 7th January, 1981 in the respondent factory as helper at Rs. 180 per month and that he received the chargesheet Exhibit M-1. He further stated that he submitted his explanation, but no enquiry was held against him nor any notice was served on him in that respect. He also stated that he had given the letter copy Exhibit W-1 to the Management.

9. A perusal of the above evidence would show that the claimant was chargesheeted alleging:—

That he was informed orally regarding his transfer to box dry section, but he refused to go there and that on 30th January, 1982, the order was given to him in writing, but he refused to receive the same. It was alleged that he

made a complaint on 1st October, 1982 to the Labour Inspector, where he was asked by the representative of the Management on 6th October, 1982 to go on duty and work in dry box section, but he refused to join duty. It was also alleged that the claimant was absenting himself since 1st October, 1982 and ultimately he joined duty on 25th December, 1982 and agreed to work in box dry section.

A perusal of the enquiry proceedings Exhibit M-5 and enquiry report Exhibit M-6 could go to show that the claimant appeared before the Enquiry Officer on 23rd January, 1983, but he refused to sign the enquiry proceedings when the enquiry was adjourned to 25th January, 1983. On that date, the claimant refused to sign the enquiry proceedings, when the Enquiry Officer deputed Shri Prabhu Chowkidar as observer and obtained his signatures whenever the claimant refused to sign the enquiry proceedings. The enquiry Officer then examined Shri Om Parkash Sharma, Shri Amar Nath and Shri Shyam Singh and submitted his report to the effect that all the charges stood proved against the claimant. The second show cause notice Exhibit M-3 was given to the claimant and since no reply was given by the claimant, the order of dismissal Exhibit M-4 was passed on 2nd February, 1983.

10. It was argued by the representative of the claimant that no notice was given to the claimant by the Enquiry Officer. The claimant was given the date of the enquiry as 23rd January, 1983 by the Management in their letter dated 15th January, 1983 copy Exhibit M-7. The claimant appeared before the Enquiry Officer on 23rd January, 1983, but he refused to sign the proceedings. Consequently, the argument does not carry any weight because the claimant appeared in the enquiry proceedings on the basis of the date fixed by the Management.

11. It was then argued that the claimant did not attend the enquiry. The argument is without any force because the Enquiry proceedings Exhibit M-5 go to show that the claimant was present not only on 23rd January, 1983, but also on 25th January, 1983, but he refused to sign the enquiry proceedings. A note to that effect was given by the Enquiry Officer in those proceedings and also obtained signatures of Shri Prabhu Chowkidar as Observer.

12. It was then argued that the past record of the claimant was not considered by the Management. In the second show cause notice Exhibit M-3, the Management informed the claimant regarding the findings given by the Enquiry Officer and also informed him that keeping in view his entire record, it was proposed to dismiss him from service. Since the claimant did not submit his reply to the second chargesheet, thereafter, the order of dismissal Exhibit M-4 was passed by the Management. Consequently, the entire record of the claimant was considered by the Management, as mentioned in the second show cause notice. The argument, therefore fails.

13. It was then argued that no opportunity was given to the claimant to produce his defence evidence. The argument does not carry any weight because the claimant refused to sign the enquiry proceedings on 25th January, 1983 and did not produce his evidence, but he refused to sign that statement as well. Consequently, the claimant did not avail of the opportunity given to him by the Enquiry Officer to lead defence evidence.

14. It was then argued that all the documents of the enquiry were not produced by the Management. It has come in evidence that some documents were destroyed by the predecessor of MW-2 Shri Ranjit Singh. The Management had summoned the official office of the Labour Commissioner, Haryana to prove the documents Exhibit M-1 to M-6. All the material documents have thus been produced.

15. It was then argued that the report of the Enquiry Officer was not based on evidence. Argument is without any force because the Enquiry Officer has given his findings after considering the evidence of three witnesses produced before him.

16. In view of the above discussion, it is held that the Enquiry was fair and proper. The issue is decided accordingly in favour of the Management.

Issue No. 2.

17. It was argued by the representative of the claimant that the punishment awarded to the claimant was not proportionate to the charges levelled against him. On the other hand, the representative of the management argued that punishment given to the claimant was commensurate with the charges proved against him. The

charges have already been mentioned above. In a nut-shell, it was alleged that the claimant was transferred to Dry Box Section on 30th September, 1982, but he refused to work in that section and he remained absent, but ultimately he joined duty on 25th December, 1983 and agreed to work in dry box section. Keeping in view the facts of the present case, the punishment of dismissal is harsh and not in proportion to the charges levelled against the claimant, especially when the claimant ultimately agreed to work in box dry section. The impugned order of dismissal is, therefore, set aside. The ends of justice would be met if the claimant is deprived of his full back wages and his two increments are stopped with cumulative effect for the misconduct attributed to him, but he must be reinstated. The award is passed accordingly.

Dated 20th January, 1986

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 55, dated 22nd January, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6Lab./741.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Satkar Guest House, Madhuban Restaurant, Neelam Bata Road, Plot No. 34, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD:

Reference No. 519/1983.

between

SMT. SHRAMWATI WORKMAN AND THE MANAGEMENT OF M/S SATKAR GUEST HOUSE, MADHUBAN RESTAURANT, NEELAM BATA ROAD, PLOT NO. 34, FARIDABAD N.I.T.

Present:—

Shri Darshan Singh, for the workman.

Shri R. C. Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute between Shrimati Shramwati workman and the Management of M/s Satkar Guest House, Madhuban Restaurant, Neelam Bata Road, Plot No. 34, Faridabad N.I.T., to this Tribunal for adjudication:—

Whether the termination of service of

Shrimati Shramwati was justified and in order? If not, to what relief is she entitled?

2. Notices were issued to both the parties. In the claim statement dated 7th September, 1984, it was alleged that the claimant was employed as sweeper since 10th August, 1974 at Rs. 400 per month and her services were terminated without any chargesheet etc. nor any notice pay or compensation was paid to her and, as such, the termination of her service was illegal. It was, therefore, prayed that she be reinstated with fullback wages.

3. M/s Madhuban Restaurant respondent in its written statement dated 13th December, 1984 pleaded that M/s Madhuban Restaurant and M/s Satkar Guest House were two separate establishments and as such, the reference was not maintainable. It was further pleaded that the respondent was covered under the provisions of Shops and Commercial Establishments Act and as such the claimant could not be reinstated under those provisions. It was also pleaded that the claimant was working as Part Time employee at a salary of Rs. 200 per month and left her service of her.

4. M/s Satkar Guest House respondent in its written statement dated 13th December, 1984, pleaded that the dispute was not maintainable and that the respondent was covered under the provisions of Shops and Commercial Establishments Act, due to which the claimant could not be reinstated under these provisions. It was further pleaded that the claimant never worked in their establishment.

5. The claimant in her rejoinder dated 4th January, 1985 averred that both these premises belonged to one family and were situated in same premises and that the claimant was working in both the establishments.

6. On the pleadings of the parties, the following issues were framed on 4th January, 1985:—

- (1) Whether M/s Satkar Guest House and Madhuban Restaurant are separate establishments and the reference is not maintainable as pleaded? OPM
- (2) Whether the claimant left service of Madhuban Restaurant of her own accord as pleaded? OPM
- (3) Whether the claimant never worked in Satkar Guest House as pleaded? OPM
- (4) Whether the termination of service of Shrimati Shramwati was justified and in order? If not, to what relief is she entitled to? OPM

7. It may be mentioned that the Management has examined one witness and documents Exhibit M-1 to M-9 have been tendered into evidence. The claimant has appeared in the witness box. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1

8. The Management has examined MW-1 Shri Harbajan Singh who stated that M/s Satkar Guest House and Madhuban Restaurant were different establishments. He further stated that Sardar Gambhir Singh was the Proprietor of M/s Madhuban Restaurant and that Exhibit M-1 was the photo stat copy of the certificate in form F issued under the Shop and Commercial Establishments Act while Exhibit M-2 was the copy of the licence issued by Faridabad Complex Administration. He further stated that Shrimati Bhagwant Kaur was the proprietor of M/s Satkar Guest House and Exhibit M-3 was the copy of Form F issued under the Punjab Shops and Commercial Establishment Act, while Exhibit M-4 was the copy of Form A. He further stated that the claimant was employed in Madhuban Restaurant as Sweeper on part time basis which establishment had been closed in June, 1984, and that the witness joined service of M/s. Satkar Guest House. The testimony of this witness is that both these establishments are separate but the case of the claimant is that these establishments are situated in one premises and that she was working in both these establishments since

1974. Since the claimant was employed in both these establishments which were situated in the same premises, therefore, her reference against both the respondents is maintainable. The issue is decided accordingly against the Management.

Issue No. 2

9. No documentary evidence has been led by the Management to prove that the claimant was employed in Madhuban Restaurant only. On the other hand, in the document Exhibit M-1 which relates to Madhuban Restaurant and Exhibit M-4 which relates to Satkar Guest House, the name of the claimant has not been mentioned. Consequently, the Management has failed to prove that the claimant was working in Madhuban Restaurant only. Shrimati Shramwati claimant WW-1 stated that when she demanded wages her hut was set on fire and she was turned out. Consequently, the claimant never left the services of the respondent of her own accord, but, on the other hand, she was turned out illegally. The issue is decided accordingly against the Management.

Issue No. 3

10. There is no documentary evidence to show that the claimant never worked in M/s Satkar Guest House or that she worked in M/s Madhuban Restaurant only because her name was not being shown in both these establishments, vide documents Exhibit M-1 and M-4, as mentioned above. The claimant took a specific plea in the rejoinder that she worked in both these establishments, which were situated in the same premises. Consequently, the Management has failed to prove that the claimant never worked in M/s Satkar Guest House. The issue is decided accordingly against the Management.

Issue No. 4

11. It was argued by the representative of the Management that the claimant was not entitled to reinstatement, but was entitled to compensation equivalent to two months' salary as provided in section 22(2) of the Punjab Shops and Commercial Establishments Act, 1958. In the ruling reported as *The Nawanshar Central Co-operative Bank Ltd. versus The Presiding Officer, Labour Court Jullundur and another*, 1980 (3) S.L.R. 358, it is laid down that where the services of an employee were terminated in violation of the provisions of Section 22(2) of the Punjab Shops and Commercial Establishments Act, 1958, he was not entitled to reinstatement, but would be entitled to compensation for two months, which he

could recover under the provisions of the said Act. The documents Exhibit M-1 to M-4 go to show that both these establishments are covered by the provisions of Punjab Shops and Commercial Establishment Act, 1958. Consequently, the claimant is not entitled to reinstatement, but she is entitled to compensation equivalent to two months wages which she can recover under the provisions of Section 22(2) of the Punjab Shops and Commercial Establishments Act, 1958 but she would be given preference over any other person in case of re-employment in accordance with the provisions of Section 25-H of the Industrial Disputes Act, 1947. The award is passed accordingly.

R. N. BATRA,

Dated 20th January, 1986

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 56, dated 22nd January, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6Lab./742.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the Workman and the management of M/s Bhagwan Dass Ghai and Sons, Re-rollers (P), Plot No. 25, Sector 6, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL.

• HARYANA, FARIDABAD.

Reference No. 245/1983.

between

SHRI RAM PAL WORKMAN AND THE MANAGEMENT OF M/S BHAGWAN DASS GHAI AND SONS RE-ROLLERS (P) PLOT NO. 25, SECTOR-6, FARIDABAD.

Present:—

Shri M. K. Bhandari, for the workman.
Shri H. R. Dua, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Pal Workman and the Management of M/s Bhagwan Dass Ghai and Sons Re-rollers (P) Plot No. 25, Sector 6, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Ram Pal was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement filed on 30th June, 1984, It was alleged that the claimant was employed with the respondent on 27th June, 1981 as Operator at Rs. 480 per month. It was then alleged that on 28th February, 1982, the claimant reported for duty, but Shri Hori Lal Supervisor did not take him on duty and that he was not allowed to join duty on 2nd March, 1982 as well. It was also alleged that on 4th March, 1982 he sent a letter to the Management, but to no effect. It was also alleged that the claimant made a complaint to the Labour Inspector on 8th March, 1982, but none appeared from Management side before him and he was instructed to give the demand notice. It was alleged that on 27th July, 1981, the claimant met with an accident and lost his right eye, but the Management terminated his services illegally and as such he was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 4th September, 1984, pleaded that they had closed the factory. It was also pleaded that the claimant joined service on 1st July, 1981 and worked for 23 days and thereafter he remained on E.S.I. leave from 27th July, 1981 to 7th January, 1982 and resumed duty on 8th January, 1982, when he worked for 17 days in January, 1982, and 21 days in February, 1982. It was also pleaded that the claimant became absent and that the registered letter sent to him was received back with the remarks that the claimant had refused to accept the service and thus had abandoned his job of his own accord.

4. The claimant in his rejoinder dated 18th September, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 18th September, 1984:—

- (1) Whether the claimant abandoned the job of his own accord as pleaded? OPM
- (2) Whether the factory had been closed as pleaded? OPM
- (3) Whether the termination of service of Shri Ram Pal was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the management examined one witness and documents Exhibit M-1 to M-3 have been tendered into evidence. The claimant has examined two witnesses and documents Exhibit W-1 to W-9 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1:

7. The management has examined MW-1 Shri Bhupinder Lal Ghai, Managing Director, who stated that the claimant was employed on 1st July, 1981,—vide letter Exhibit M-1 and came for duty for 22/23 days and thereafter he received injury and remained on E.S.I. leave for six months, when again came on duty in January, 1982, but he absented himself in February, 1982. He further stated that the chart showing attendance of the claimant, etc. had been prepared on the basis of the record, which was Exhibit M-2. He further stated that the registered letter Exhibit M-3 was received back with the remarks that the claimant had refused to receive the same. He further stated that the claimant did not turn up after 23rd February, 1982.

8. Shri Ram Pal claimant appeared as WW-1 and stated that he was employed on 26th June, 1981 and was getting Rs. 480 per month when he was turned out on 28th February, 1982. He further stated that he was put off by the respondent 4 days on one pretext or the other. He further stated that he filed a complaint on 4th March, 1982 to the Management and also to the Labour Inspector but the management did not appear there. He also stated that he met with an accident on 27th July, 1981 while operating the machine inside the factory and his eye was injured. He further stated that he remained under treatment in E.S.I. and was sent to Safdarjang Hospital and that documents Exhibit W-2 to W-5 were issued from that Hospital. He further

stated that Exhibit W-6 was the certificate issued by the Sarpanch of his village while Exhibit W-7 to W-9 were the slips issued by E.S.I. He also stated that he resumed duty on 8th January, 1982 and did not receive any letter from the respondent nor he refused to receive the letter Exhibit M-3. He also stated that he never remained absent for 8/10 days continuously in the factory.

9. A perusal of the above evidence would show that according to MW-1 Shri Bhupinder Lal Ghai, the claimant joined service on 1st July, 1981 and remained on E.S.I. leave and again joined duty in January, 1982, but he absented himself with effect from 28th February, 1982. His testimony is also to the effect that the registered letter Exhibit M-3 was sent to the claimant on 8th March, 1982, but the same was received back by the Postal authority with the remarks that the claimant had refused to receive the same. It is thus apparent that the claimant absented himself with effect from 28th February, 1982 and he refused to receive the registered letter dated 8th March, 1982 as per the report made by the Postman on 15th March, 1982. This circumstance shows that the claimant abandoned his job because otherwise he would not have refused to receive the registered letter. The testimony of WW-1 Shri Ram Pal and WW-2 Shri Rohtas to the effect that the claimant was turned out on 28th February, 1982 cannot be accepted because the management sent a registered letter on 8th March, 1982, to the claimant after waiting for 3 days and asking him to join duty, but the claimant refused to receive that letter. The claimant has not examined the concerned postman in rebuttal to show that the report made by the postal authority was not correct. The representative of the claimant placed reliance on the ruling reported as *G. T. Lad and others and Chemicals and Fibres of India*, 1979-I-LLJ-page 257, in which it is laid down that the abandonment by the workmen is always a question of fact. This ruling is distinguishable on facts because in that case, the management treated absence during strike by the workers as abandonment from service. No such contingency has arisen in the present case. The second ruling is *Ramhuwal Thakar Prasad and Phoenix Mills*, 1976-I-LLJ-page 93, in which it is laid down that the opportunity to be heard must be provided before legal fiction of abandonment of service can come into play. This ruling does not help the claimant because in the present case, management has produced the registered letter sent to the claimant with the report that he had refused to receive the same and no cogent evidence has

been led by the claimant to rebut this evidence. Consequently, it is held that the claimant abandoned his job on 28th February, 1982. The issue is decided accordingly in favour of the management.

Issue No. 2:

10. MW-1 Shri Bhupinder Lal Ghai stated that the factory was lying closed since April, 1984. No question was put to him in cross-examination. Consequently, his version stands unrebutted. Moreover WW-1 Shri Ram Pal stated in cross-examination that he saw 6/7 persons in the factory, but he could not tell their names. He further stated that two other workers of his village were not working in the factory. His testimony thus does not go to show that the factory is being run. WW-2 Shri Rohtas stated in cross-examination that the lock-out was declared by the management and that all the workers were discharged. According to this witness, no worker is working in the factory. Consequently, the above evidence goes to show that factory was closed from April, 1984. The issue is decided accordingly in favour of the management.

Issue No. 3:

11. According to MW-1 Shri Bhupinder Lal Ghai, the claimant was appointed on 1st July, 1981 and he worked there when he proceeded on E.S.I. leave from 27th July, 1981 to 7th January, 1982. The medical certificates Exhibit W-2 to W-5 and E.S.I. Slips Exhibit W-7 to W-9 have been produced by the claimant in this respect. Consequently this period is to be treated as E.S.I. leave and the claimant would be considered to be on duty. The claimant joined on 8th January, 1982 and worked up to 27th February, 1982. He thus rendered continuous service from 1st July, 1981 to 27th July, 1982 and this period came to 242 days. WW-1 Shri Ram Pal and WW-2 Shri Rohtas stated that the claimant worked up to 27th February, 1982, regularly and as such the details given in the document Exhibit M-2 are not correct because during the period from 27th July, 1981 to 7th January, 1982, the claimant has to be treated on duty being on E.S.I. leave. During the intervening period from 1st July, 1981 to 27th February, 1982 he remained on duty regularly. Since the claimant had completed 240 days service in a year, therefore, the provisions of section 25-F of the Industrial Disputes Act, 1947, apply to his case. No compensation or notice pay was given to the claimant by the management and as such the termination of his service was neither justified nor legal because

the provisions of section 25-F of the Industrial Disputes Act, 1947, have not been complied with. Since the factory is lying closed since April, 1984, therefore, the claimant is not entitled to reinstatement. Consequently, the claimant is entitled to full back wages from 28th February, 1982 to 31st March, 1984 till the closure of the factory and notice pay as well as compensation as provided in section 25-F read with section 25-FFF of the Industrial Disputes Act, 1947. The award is passed accordingly.

R. N. BATRA,

Dated 20th January, 1986.

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 57, dated the 22nd January, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

The 25th February, 1986

No. 9/6/86-6 Lab./1163.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947. (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. Hindustan Machine Tools Ltd., Pinjore.
IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIRING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 230 of 1984

SHRI RAMJI DASS, WORKMAN AND THE
MANAGEMENT OF THE MESSRS HINDU-
STAN MACHINE TOOLS, LTD.,
PINJORE.

Present:—

Ramji Dass workman in person.

Shri R. L. Gupta for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Ramji Dass, workman and the Messrs Hindustan Machine Tools Limited, Pinjore, to Labour Court, Rohtak. The terms of the reference are as under:

"Whether the termination of services of Shri Ramji Dass, workman, was justified and in order? If not to what relief is he entitled?"

Labour Court at Ambala was constituted in April, 1984, thereafter, this reference was received by transfer.

The workman through his claim statement alleged that he joined the employment of respondent-management as a Painter and had been discharging his duties with sincerity and faithfulness. He further alleged that he was an expert in the work of painting he found certain defects in the working of painting in the respondent-management. He wrote certain letters to the management for improving the functioning of the management. Due to that fact his immediate incharge was displeased with him. On 21st November, 1969, when he was coming out of main gate he was searched and certain articles like paint ring and one knife were recovered out of his tiffin which were got put by his immediate incharge in his absence when he had gone to ease himself. The management threatened him to implicate in a theft case under that duress his resignation was got written which was accepted by the management, in spite of the fact that he had written a letter to the management that he wants to withdraw his resignation but he was not heard. No enquiry was conducted against him and his services were terminated in violation of section 25 (F) of the Industrial Disputes Act, 1947. As well as against natural principles of justice. He has prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested this case and contended that Shri Ramji Dass joined their organisation on 10th June, 1965, and submitted his resignation on 21st November, 1969. Which was accepted and acceptance was coveyed to the workman. It was further contended that no doubt it was open to an employee to withdraw his resignation at later stage but when the same

had been accepted by the management so there was no question of withdrawal of the resignation letter. Shri Ramji Dass was charge sheeted and was placed under suspension, since Shri Ramji Dass had already submitted his resignation so no further action was required. It was further contended that it is not a case of termination of services of workman by the management but in fact workman resigned of his own left services of the management and the resignation was accepting by management, so Ramji Dass, workman is not at all entitled to the reliefs claimed for.

On the pleadings of the parties the following issues were framed:

ISSUES:

- (1) Whether the workman Shri Ramji Dass, voluntarily resigned from service.
- (2) Whether the termination of services of Shri Ramji Dass was justified and in order, if not to what relief is he entitled?

ISSUE No. 1:

This is most crucial issue result of the same will decide the destiny of the parties. In view of the above pleadings it is clear that case of workman is that he was falsely implicated in theft case and management obtained his resignation under duress and threat on the other hand the management refuted it and contended that workman committed theft of paint, patti ring and knife which were recovered from his possession at the time of search in the security gate and thereafter the workman out of fear of his prosecution in the theft case submitted his resignation.

The management in support of its case examined MW-1. Shri S. Joly who stated that workman Ramji Dass was employed as a painter in the grade of WSS. Ex-M-2 statement was made by Ramji Dass in his presence note Ex-M-2/A was made by Shri Kashap in his presence Shri D. N. Rakhray accepted the resignation of Shri Ramji Dass workman, MW-3. Shri D. P. Sharma, security inspector both deposed on oath that on 21st November, 1969, Shri Ramji Dass was searched by MW-2 out of his tiffin white paint was recovered when he was searched in the security office patti wrapped in a piece of paper and one knife wrapped in a handkerchief and some waste cotton were recovered one wild,

steel strip also recovered which he had tied with his Janau. Both the witnesses further stated that the management wanted to refer the case of this theft to the police but the workman apologised for his misconduct at this act of theft and he prayed that he may be excused thereafter the workman was put under suspension and he submitted resignation.

Statement of both these witnesses go unchallenged there is not even a single suggestion from the side of the workman that they made incorrect statement. There is no cross-examination of these two witnesses that they have deposited out of enmity or at the instance of management because he had written 40—50 letters to the superior officers against his incharge.

On the other hand Shri Ramji Dass workman examined Shri Lajpat Rai WW-1. He stated that he is a typist. Shri Ramji Dass, workman got typed 40—50 letters from him pertaining to the business of respondent-management.

Shri Ramji Dass himself appeared in the witness box. In examination chief he admitted that acceptance of his resignation letter was received by him which is Ex-MW-2/14. He stated that he was falsely implicated in the case of theft statement dated 21st November, 1969, was got written from him under duress he further stated that Ex-M-5-2-7 might have been recovered from his tiffin. He further stated that he had got installed telephone at his house because he is fond of telephone.

In view of above evidence of the parties I am of the considered opinion that on 21st November, 1969. Shri Ramji Dass had been caught red-handed and was found in possession and stolen articles paint, ring, knife and patti, etc., which were recovered out of his tiffin and pocket. The management had reported this theft case to the police. Thereafter, workman to avoid prosecution from the case of theft confessed his guilt and he voluntarily submitted his resignation.

From the evidence which is available on the file it has become crystal clear that Ramji Dass submitted his resignation because he had stolen the above mentioned articles property of the management. When the management witness

came in the witness box he did not cross-examine on the point that the article of theft were not recovered from his possession and they have deposed falsely against him.

The resignation was accepted by the management acceptance of resignation was conveyed by the management to the workman as admitted by him. Thereafter the workman moved an application to withdraw his resignation which was turned down.

Accordingly; this issue is decided, in favour of management against the workman.

ISSUE No. 2:

Under issue No. 1, I have specifically held that Shri Ramji Dass workman submitted his resignation to save himself from his prosecution by the police in a theft case. So in fact it is voluntarily submission of resignation by the workman and there is no question of termination of his services by the management. The acceptance order of resignation of workman, Ramji Dass is justified and in order.

In view of above discussions I am of the considered view that Shri Ramji Dass, workman is not at all entitled to any relief claimed by him either towards his reinstatement or receipt of back wages, etc. I pass award regarding the dispute in question accordingly leaving the parties to bear their own costs.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Dated the 27th December, 1985.

Endorsement No. 3324, dated the 31st December, 1985

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the

Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.